

MONTANA LEGISLATIVE HISTORY

Chapter 5 19 93

Bill H 36 S _____ Original bill & history C

H. Committee on Agriculture, Livestock & Irrigation S. Committee on Agriculture, Livestock & Irrigation

Hearing Date(s) Jan 05 ☒ C

_____ ☐ C

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Date Out Jan 06 ☒ C

Hearing Date(s) Jan 15 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Jan 18 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HB 35 INTRODUCED BY D. BROWN
ELIMINATE SUFFICIENCY OF PLEADING IN PROSECUTION FOR HIDE
CONCEALMENT

BY REQUEST OF DEPARTMENT OF LIVESTOCK

12/23	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
1/04	FIRST READING		
1/08	HEARING		
1/11	COMMITTEE REPORT—BILL PASSED		
1/12	2ND READING PASSED	96	1
1/13	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
1/15	FIRST READING		
1/15	REFERRED TO JUDICIARY		
3/02	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	49	0
3/05	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/12	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 105		
	EFFECTIVE DATE: 10/01/93		

HB 36 INTRODUCED BY BARNETT
REVISE LIVESTOCK MARKETING CUSTODIAL ACCOUNT LAW
BY REQUEST OF DEPARTMENT OF LIVESTOCK

12/23	INTRODUCED		
12/30	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/04	FIRST READING		
1/05	HEARING		
1/06	COMMITTEE REPORT—BILL PASSED		
1/07	2ND READING PASSED	99	0
1/08	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
1/11	FIRST READING		
1/11	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/15	HEARING		
1/19	COMMITTEE REPORT—BILL CONCURRED		
1/20	2ND READING CONCURRED	48	0
1/21	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
1/26	SIGNED BY SPEAKER		
1/26	SIGNED BY PRESIDENT		
1/27	TRANSMITTED TO GOVERNOR		
1/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 5		
	EFFECTIVE DATE: 10/01/93		

HB 37 INTRODUCED BY D. BROWN
INCREASE PENALTY FOR ALLOWING ANIMAL TO UNLAWFULLY RUN AT
LARGE

BY REQUEST OF DEPARTMENT OF LIVESTOCK

12/23 INTRODUCED

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on January 5, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Jay Stovall (R)

Members Excused: Rep. Bob Endy
Rep. Wayne Stanford

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 36 and HB 58
Executive Action: HB 36

HEARING ON HB 36

Opening Statement by Sponsor:

REP. JOE BARNETT, HD 76, Belgrade, said this bill was brought to
the committee at the request of the Department of Livestock. He

said the bill is for an act making separate felony offenses for the knowing failure to establish a livestock marketing custodial account and the improper use of a livestock marketing custodial account; and amending section 81-8-216, MCA.

He stated that a word or two needed to be changed to make it gender appropriate; i.e., by changing the word "his" to "the person's". REP. BARNETT indicated the reason lines 13 through 15 were added to the bill was to tighten up the rules on the use of custodial accounts. He said the custodial accounts that the marketing associations have established belong to the producer and not to the bank where the custodial account might be housed nor to the marketing association itself. He stated that the money is put into the account and then the money is to be dispersed to the producer within 24 hours after the sale. He said sometimes those accounts will accumulate up to a couple million dollars. He said if the marketing association is on "unstable ground" they may use that money. If the marketing association would happen to go bankrupt, then the producer would not get his or her share of money back.

Proponents' Testimony:

Cork Mortensen, Executive Secretary, Board of Livestock, said this bill made the language more specific and clarified anything that may arise in the misuse of the custodial account. He stated there certainly is a need to have a custodial account established and a need to use it properly.

Les Graham, Montana Association of Livestock Auction Market, said the association fully supports the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DON LARSON asked how the custodial accounts are established and how the money flows into them. Mr. Mortensen stated the accounts must be established by the markets. The money consists of checks which are not picked up from consignments by the producers. The money would be deposited to the custodial accounts and would remain there until the original consignor of the livestock called to request his check. The reasons the money would stay in the custodial account varied; it may be due to a producer's change of address or checks were returned due to insufficient funds or the checks were just forgotten and left there. He stated that this bill was written for the protection of the producer.

REP. JOHN "SAM" ROSE asked how often money is left in the

custodial accounts. Mr. Graham stated that the check of the livestock buyer would go into the custodial account. The auction market was allowed to deduct the selling fee, then the sellers would receive the balance. The auction market was allowed to deduct the selling fee on a periodic basis. He stated there was a problem about 30 years ago in Dillon. He said a few years ago, the primary interest was reestablished by an incident which occurred in South Dakota. He said a lot of money was lost by producers. The money in the custodial account had been used for private investment. The marketing association had been taken to court and the court considered the custodial accounts as part of the marketing association's assets.

Closing by Sponsor:

REP. BARNETT thanked the committee for their attention and time and closed.

HEARING ON HB 58

Opening Statement by Sponsor:

REP. VERNON KELLER, HD 83, Fishtail, said that HB 58 is to amend 81-7-401 MCA. He stated that a newspaper in Kalispell had an article about a man who shot a dog that was in his corral harassing his animals. Through the court process, the rancher ended up paying \$800 for the dog. REP. KELLER believed that by adding the word "harass" to the statute would alleviate most livestock owner's problems. He stated that the stray dog was deliberately causing stress to the domestic animal and it may cause undo harm and discomfort to the animal. Ultimately, it may end in death or permanent disability. He said there could be the possibility that a dog would run through a rancher's place and be killed which was why harassed was added to the bill. EXHIBITS 1 and 2

Proponents' Testimony:

Gary Graves, Wool Growers Association, presented written testimony. EXHIBIT 3

Stephan Sherick, Western Montana Sheep Association, presented written testimony. EXHIBIT 4

Stan Pelton, self, presented written testimony. EXHIBIT 5

Richard Bridges, self, presented written testimony. EXHIBIT 6

Gordon Darlington, self, stated that one should treat an animal with "humaneness", however, allowing a dog to harass his animals was not humane. He said these animals were being harassed and

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

1/5/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY			✓
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD			✓
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

Closing by Sponsor:

REP. KELLER stated that many times the rancher does not know who the owners are in order to recover damages. Therefore, it would make it difficult to fine the owners. He thanked the committee for their time and attention.

EXECUTIVE ACTION ON HB 36

Motion/Vote: REP. LARSON MOVED HB 36 DO PASS. The motion carried unanimously.

HOUSE STANDING COMMITTEE REPORT

January 6, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and
Irrigation report that House Bill 36 (first reading copy --
white) do pass .

Signed: _____
Vern Keller, Chair

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on January 15, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Jack "Doc" Rea, Chair (D)
Sen. Francis Koehnke, Vice Chair (D)
Sen. Tom Beck (R)
Sen. Jim Burnett (R)
Sen. Gary Forrester (D)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: Sen. Aklestad, Sen. Bruski-Maus

Members Absent: Sen. Gerry Devlin (R)

Staff Present: Doug Sternberg, Legislative Council
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 36, SB 85, SB 73
Executive Action: SB 73, SB 85, HB 36

HEARING ON HB 36

Opening Statement by Sponsor:

Rep. Joe Barnett, District 76, presented HB 36 which would establish custodial accounts during livestock sales. After the sale the buyer pays the market. The money is then placed in a custodial account to pay the owner/seller. This account is independent from the market and may only be drawn on by the seller and should be paid, by statute, within 72 hours. The purpose of these accounts are to prevent misappropriation of funds by the market and to ensure that the funds go directly to the seller. Rep. Barnett gave an example from South Dakota where the market went bankrupt and the court tried to incorrectly impound the custodial account. This has not occurred in Montana and this would be a preventative measure. The bill also contains gender cleanup language.

Proponents' Testimony:

Jack Sedgwich, Administrator Brands Enforcement Division,
Department of Livestock. (See exhibit #1)

Les Graham, Montana Association of Livestock Auction Markets, was
in full support of this bill.

Nancy Espey, Vice Chairman, Board of Livestock added that this
bill would cover special sales.

Lorna Frank, Montana Farm Bureau, said the organization was in
full support and this bill is supported by their charter.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Halligan asked if the language in the bill is specific enough to cover a situation where the market files bankruptcy by stopping misappropriation of funds. He suggested that the Legislative Council check into this. Jack Sedgwich replied that an auction market recently went under and that these funds were protected. Sen. Halligan asked if attorneys had to be hired and that if so, it could cost \$500 in legal fees to receive a \$500 payment from the market. Les Graham said that the custodial account is pre-set, determined by the number of cattle to be sold. This account is initially established with a letter of credit and over the years the fees, yardage, and interest are legally removed from this account. A problem occurs when many sellers do not claim their checks from the fund. A cushion thus builds up and it is difficult for the stockyards to reconcile their books. He stated that sometimes people will go 2 to 3 years without claiming or cashing their checks.

Sen. Rea asked where the custodial funds are deposited. Mr. Graham stated that the funds are deposited directly into the custodial account are not to be touched by the market. However, there is a temptation to use these funds for other purposes. He cited the purchase of a condo in Hawaii by a market in another state.

Sen. Beck asked if there was time limit on withdrawal from the custodial account. Rep. Barnett answered that even when the check may not yet be written, the funds are earmarked for that individual. There are a number of reasons that the money may sit in the custodial account.

Sen. Beck thought that there was a 72-hour time limit for the market to write a check. Rep. Barnett replied that the check would probably not be written until the seller asked for it. Mr. Graham added that it can be confusing due to overlapping state and federal statutes. The auction market is required by law to write the check within a 24-hour period after the close of the market. The problem occurs not in the writing of the check, but with the failure of the seller to cash the check. Sen Beck suggested that there should be a time limit under which these checks could be cashed.

Sen. Beck asked what would happen to the custodial account in case a market closed. Mr. Graham said the money should stay in that account until claimed. A possible solution to this problem would be the formation of a state trust.

Sen. Koehnke asked if the check had to be mailed within 24 hours after the sale. Mr. Graham said that the check must be handed in person or mailed 24 hours after the sale. He reiterated that the problem occurs when checks to the seller are not cashed.

Nancy Espey said that the Board of Livestock is concerned with the build-up of these custodial accounts. The best example is the recent failure of a South Dakota market, in which Montana producers lost money. A mechanism should be developed to occasionally purge these accounts.

Closing by Sponsor:

Rep. Barnett asked that the committee vote yes on this measure.

HEARING ON SB 85

Opening Statement by Sponsor:

Sen. Keating, District 44, stated that during the Legislative Audit hearings in the interim, irregular accounting practices are sometimes discovered. SB 85 covers one of these situations and comes at the request of the Audit Committee. The US Department of Agriculture changed some accounting procedures so that the Hail Board is required to change the expendable trust to an enterprise fund. Amendments will be needed. (See exhibit #2).

Proponents' Testimony:

Closing by Sponsor:

Sen. Keating added that the administrative costs are proprietary funds that are earned from the premiums. He concluded by pointing out that the state has adopted the General Accounting principle standards. As a result, the state has been better prepared for federal audits. The Legislative Auditor has received certificates of excellence for their work and has saved interest income due to the quality of these audits. If SB 85 is accepted with amendments, everyone should be satisfied.

Doug Sternberg, Legislative Council, explained the amendments to the committee. The essence of the amendments is to include reference to 80-2-222 in statutory appropriations and to grant authority to the Hail Board to spend these funds.

EXECUTIVE ACTION ON SB 85Motion/Vote:

Sen. Halligan moved DO PASS on the amendments. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Sen. Halligan moved SB 85 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 36Discussion:

Doug Sternberg, Legislative Council, explained that HB 36 only revises the penalty statute. It does not address bankruptcy or other issues, which would have to be addressed on a case-by-case basis in court. On page 2, line 10, "and" requires that both elements would have to exist to prosecute the crime. By inserting "or" on line 12 then only one element would have to be found to prosecute, thus creating two separate offenses. One offense would be the knowing failure to establish an account and the second would be the improper use of that account.

Sen. Beck asked why not change "and" to "or" in subsection A. Mr. Sternberg replied that it is gender language cleanup and grammar. There will be more of this type of action during the session.

Sen. Beck asked if there needed to be an A and a B subsection. Mr. Sternberg answered affirmatively, thus ensuring the separation of the two offenses.

Motion/Vote:

Sen. Halligan moved that HB 36 BE CONCURRED IN. The motion
CARRIED UNANIMOUSLY.

Meeting recessed from 1:50 to 2:10 p.m.

HEARING ON SB 73

Opening Statement by Sponsor:

Sen. Devlin brought this bill because railroad lines were not keeping up their fences, thus allowing cattle to wander on to the rails and be killed. There has never been a penalty for not maintaining these fence lines. There is also not a time limit for payment by the railways after an animal is killed. This bill would place a 30-day time limit with a 10% interest penalty each day after that. There are amendments that should be included with this bill. (See exhibit #5).

Proponents' Testimony:

Jamie Doggett, Montana Cattlemen and Montana Stock Growers Association, supports SB 73. It clarifies the fence maintenance issue and ensures timely payment in the event of the death of an animal for which the railroad is at fault.

Pat Keim, Director of Government Affairs, Burlington Northern(BN) supports this bill, including Sen. Devlin's amendments.

Russ Ritter, Government Affairs Director for Montana Rail Link (MRL), supports the bill and the amendments.

Ralph Peck, Deputy Director, Montana Department of Agriculture, supports SB 73. (See exhibit # 3)

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Beck inquired about the 30-day time limit until the fence is fixed. He asked that if the time was too long, and the rancher fixed the fence, whether the railroad would reimburse the landowner. Mr. Keim said that the 30-day limit is a compromise

ROLL CALL

SENATE COMMITTEE AGRICULTURE DATE 1-15-93

[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 18, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration House Bill No. 36 (first reading copy -- white), respectfully report that House Bill No. 36 be concurred in.

Signed: Jack "Doc" Rea
Jack "Doc" Rea, Chair



Amd. Coord.
Sec. of Senate

130904SC.San

HB 36

Mr. Chairman and members of the committee, for the record my name is Jack Sedgwick, Administrator of the Brands Enforcement Division of the Department of Livestock. I come before you today on behalf of the Board of Livestock and urge you to support this bill for the following reasons:

As written this bill changes section 81-8-216, MCA making it "gender appropriate". It changes the words "shall" to "must" thereby making it explicit and mandatory that certain revenue requirements be carried out.

Lastly, this bill separates the necessity for the establishment of a custodial account from the proper use of a custodial account. Both are required, but now only one needs to be proven to establish a violation of law.

We believe this bill will encourage entities to properly maintain those custodial accounts and to more properly use those custodial accounts thus better protecting the public and producers.

I want to thank this committee for its time and consideration in this matter and should be most happy to respond to any questions or to furnish any information needed for you to make your decision. Again, let me urge you on behalf of the Board of Livestock to support this legislation.

Thank you.

Jack Sedgwick

Jack Sedgwick, Administrator
Brands Enforcement Division
Department of Livestock

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 1/15/83

BILL NO. HB 36

DATE 1/15/93

SENATE COMMITTEE ON AGRICULTURE

BILLS BEING HEARD TODAY: SB 85, HB 36, SB73

*** PLEASE PRINT ***

Bill
No. Check One
Support Oppose

Name	Representing	Bill No.	Support	Oppose
JAMIE DAGGETT	MT Cattlewomen	73	✓	
JACK SEDGWICK	DEPT. OF LIVESTOCK			
Les CRAN	MT L.S. Auction Assn	36	✓	
Grant Zerby	State Hair Board			
Wayne Budt	Mont PSC	73		
Nancy Eny	Board of livestock	36	✓	
Ralph Peck	MT Dept of Agriculture	85 73	✓	
Russ Ritter	MRL	73	✓	
Lerna Drake	MT. Dairym Bureau	36	✓	
Randy Johnson	MEGA	85	✓	
PAT Keim	Burlington Northern	SB73	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY